SUPR... COURT, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-1164

EARL L. WATTS,
Petitioner in Certiorari,

vs.

ETHEL GRADY MYLIUS,
Respondent in Certiorari.

RESPONSE

Of Ethel Grady Mylius to Petition for Writ of Certiorari to the Court of Appeals of Georgia

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JURISDICTION OF SUPREME COURT OF THE UNITED STATES

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

This Honorable Court should deny jurisdiction of Petitioner's Application for Writ of Certiorari in that applicant has failed to state the facts of this case completely

and accurately and has failed to properly present to this Court a Federal question of any gravity and magnitude.

This case came on regularly for hearing on December 22, 1970. Appellant presented a medical affidavit to attempt to postpone the trial of this case. Appellee demanded a legal showing and production of the person of Appellant. This affidavit **did not** recite that it was given for use in a continuance hearing on a certain date nor was it styled up with the caption name and lower court case number as provided by law. Further, this affidavit was not introduced in evidence but merely filed as part of the case record. The evidence relative to Appellant's motion for continuance is void of any statement from Appellant's counsel that he cannot go to trial safely without Appellant's presence.

The transcript of evidence shows clearly that at the time of trial there were two felony warrants outstanding for Appellant, one for **Theft by Deception** and the other for **Violation of Georgia Securities Act.**

The transcript further shows that Appellant had not been arrested and was a fugitive from justice on these two felony charges. Counsel for Appellant stated to the court that he did not know the **whereabouts** of his client.

In this connection I quote from page 7 of the transcript of evidence in this case.

> "Mr. Shaw: I want to pursue this further, Your Honor. I do not know where Mr. Watts is. I do not know where he is.
>
> The Court: All right. All right, the Court does not —I don't think I implied, and I certainly didn't mean to imply, that you did know his whereabouts, Mr. Shaw.
>
> Mr. Shaw: I'll be honest with you, I do not know his whereabouts.
>
> The Court: No, sir. All right."

The application of Mr. Watts on its face would make it appear that the Court was putting on trial a poor sick man. The foregoing additional facts clarifies this point. If he is seriously ill, then why didn't his trial court attorney know his whereabouts?

The application was not introduced into evidence. Even if it had been, it would not be admissible since the same was not in proper form. **Brucker v. O'Conner**, 115 Ga. 95 (4) (41 S.E. 245). In **Terry v. The State**, 15 Ga. App. 108, it was held that where the whereabouts of a witness was not known, so that his attendance could be assured for the next term, the failure to grant a continuance was not an abuse of discretion. It is provided under Georgia law that applications for continuance are addressed to the sound discretion of the Court.

> "**Ga. Code 81-1410 (5724;992 P.C.), Counter-showing and discretion of court.** All applications for continuances are addressed to the sound discretion of the court, and, if not expressly provided for, shall be granted or refused as the ends of justice may require. In all cases the presiding judges may, in their discretion, admit a counter-showing to a motion for a continuance, and, after a hearing, may decide whether the motion shall prevail (Acts 1871-2, p. 49)."

From the facts in evidence before the trial court I am certain that the court concluded that the affidavit was not legal evidence since it was not in proper form. Further, that said affidavit was a sham and an attempt to delay the plaintiff's case, since counsel for Mr. Watts stated that he did not know his whereabouts. The trial court detected that apparently Mr. Watts was hiding from the authorities to prevent arrest based on outstanding warrants and that his acts were not in good faith and that the ends of justice required that the plaintiff be allowed to proceed.

I note on page 16 of Petitioner in Certiorari's Application, facts outside the record; namely, in the second paragraph it is stated: ". . . The First Party, however, secured a loan for the purchase of said property for the price of $350,000.00 agreed upon in the option and consummated said sale and is now operating a Personal Care Home on said property in the name of Candler Manor, Inc." This evidence was not presented at the trial, has not been subjected to cross-examination, and it is highly improper for counsel to interject evidence not sworn to and which is irrelevant and immaterial to this case.

Either of the foregoing reasons is sufficient to deny applicant's Writ.

In the Court of Appeals of the State of Georgia, applicant's statement of enumeration of errors failed to enumerate and include any State of Georgia or United States constitutional ground as a reason for reversal. Not having raised a federal question of gravity and importance in the State Court, applicant cannot now raise a federal question for the first time. Ellis v. Dixon, N.Y. 1955, 75 S. Ct. 850, 349 U.S. 458, 99 L.Ed. 1231, rehearing denied 76 S. Ct. 37, 350 U.S. 855, 100 L.Ed. 759.

The application for Writ of Certiorari should be denied.

Respectfully submitted

MACKAY & ELLIOTT

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Certificate of Service

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States mail, a copy of same in a properly addressed envelope with adequate postage thereon.

This the 5 day of April, 1972.

Mackay & Elliott

By .....
James A. Mackay
Attorneys for Respondent